

April 12, 2004

Ms. Ann M. Reyes Robbins
3400 South Sare Road, No. 1125
Bloomington, Indiana 47401

Re: 04-FC-42

Alleged Violation of the Access to Public Records Act by the Allen Superior Court

Dear Ms. Reyes Robbins:

This is in response to your formal complaint alleging that the Allen Superior Court (Court) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it denied your request for personnel records. For the reasons set forth below, it is my opinion that the Court did not deny you access to records in violation of the APRA.

BACKGROUND

On February 1, 2004, you submitted a written request for records to the Court. Your request sought access to any requests for records related to your termination as a magistrate of the Court, along with any responses that were submitted to those requests. You also requested any information relating to the status of formal charges against another magistrate, and information concerning any final disciplinary action that was taken against that employee and one other employee with the Court. Finally, you sought phone records for the facsimile machine for a three-month period in 2003.

On February 9, 2004, the Court submitted a written response. The Court's response acknowledged and identified a single request for records regarding your termination, but stated that it was made orally and thus the Court had no records responsive to that part of your request. The Court provided you with its written response to that oral request. With regard to your request for information on the status of formal charges against another magistrate of the Court, the Court noted that the magistrate in question resigned from the Court and no formal charges were brought against him, therefore the Court had no records responsive to that part of your request. With regard to your request for information concerning any final discipline taken against two employees, the Court responded by providing you with documents concerning one (apparently, a summary of that employee's work history), and stating that it had no responsive

documents concerning the other. The Court also provided you with documents responsive to your request for phone records.

On February 15, 2004, you made a second written request for records. In this request you sought records in twelve categories, including unemployment compensation information, disciplinary procedures and actions (particularly as they related to other employees of the Court), personnel information for other employees of the Court, position descriptions, and administrative records. Your request acknowledged the prior production and specifically the work history produced in response to your request for disciplinary actions taken against another employee of the Court. As a follow up to that production, and relevant to this opinion, your February 15, 2004, request sought a copy of a June 7, 2000, reprimand issued against that employee.

On February 25, 2004, the Court again responded in writing and again produced multiple documents response to your request. The Court expressly declined to produce records regarding any reprimands issued against any employees or former employees on the basis that the records requested were personnel records subject to exemption from production. The Court stated that it was not required to produce copies of records related to the reprimand of employees. The Court's February 25, 2004, response did not cite to the specific statutory provision permitting the nondisclosure, but its earlier response did cover production of public records required to be produced under the personnel records exemption and citing Indiana Code 5-14-3-4(b)(8).

On February 28, 2004, you wrote directly to counsel for the Court in response to the February 25, 2004, production, and asserted that the nondisclosure of records of reprimand violated the APRA. You requested that counsel provide you with the specific legal basis for withholding the requested records.

This complaint followed. In your complaint you characterize that portion of your February 25, 2004, request, pertaining to the disciplinary records of a former magistrate as a clarification of your first request wherein you received production of his work history pursuant to Indiana Code 5-14-3-4(b)(8)(A), (b)(8)(B) and (b)(8)(C). You further allege that you received no response to your February 28, 2004, correspondence requesting "clarification for the refusal to provide" you with records relating to the reprimand of that employee and with regard to reprimands issued to two other employees. You allege that you were denied access to those records in violation of the APRA. Your complaint seeks priority status and expedited review pursuant to 62 IAC 1-1-3(3), for the reason that you seek the records for use in a proceeding to be conducted by another public agency.

ANALYSIS

As a threshold matter, I decline to find your complaint subject to priority status and expedited review pursuant to Indiana Administrative Code 62 IAC 1-1-3. While you generally allege that you intend to use the requested records in a proceeding to be conducted by another public agency, your complaint in that regard fails to offer any facts supporting your request for expedited review under the criteria relied upon as set forth in the Indiana Administrative Code.

Turning to the merits, I find that the Court did not violate the APRA when it exercised its discretion to deny you access to the records of reprimand.

The public policy of the APRA is set forth in the preamble to that statute, and states:

[I]t is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.

IC 5-14-3-1. In enacting the APRA and the broad policy supporting access to public records, the Indiana General Assembly at the same time acknowledged and determined that public policy required that certain records were appropriate to be maintained as confidential. Indeed, Indiana Code 5-14-3-4 sets forth thirty-one (31) instances in which the public agency must or may withhold disclosure of public records (IC 5-14-3-4), and Indiana Code 5-14-3-3(a) subjects access to public records to the exemptions as set forth in that section (IC 5-14-3-3(a)). Even the preamble acknowledges that some public records are not subject to disclosure. *See* 5-14-3-1 (“This chapter shall be liberally construed to implement this policy and place the *burden of proof for the nondisclosure of a public record* on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.”) (Emphasis added).

Indiana Code 5-14-3-4(b) sets forth the exemptions to disclosure that are discretionary with the public agency. That is to say, the agency may disclose the requested information if it so chooses. One of the discretionary exemptions includes personnel file information. IC 5-14-3-4(b)(8). However, this discretionary exemption is subject to exceptions for three categories of information that are required to be disclosed upon request. Relevant to this opinion are the requirements for the mandatory disclosure of the “factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being *suspended, demoted, or discharged.*” IC-5-14-3-4(b)(8)(C) (Emphasis added). Notwithstanding the general exemptions available to permit a public agency to withhold personnel file information, a public agency must disclose any records it maintains relating to the factual basis for final discipline resulting in suspension, demotion or discharge. All other personnel records, including records memorializing lesser forms of discipline, are subject to nondisclosure at the agency’s discretion. IC 5-14-3-4(b)(8).

Here, the records that are the subject of the nondisclosure and your complaint are personnel records relating to employee reprimands. These records do not relate to the suspension, demotion or discharge of an employee and thus are not subject to the mandatory disclosure requirements of Indiana Code 5-14-3-4(b)(8)(C). Because they are personnel records that are not subject to the mandatory disclosure requirements, they may be properly withheld at the agency’s discretion pursuant to Indiana Code 5-14-3-4(b)(8).

As a final matter, I address the Court's February 25, 2004, response declining to produce those records. Because you were denied records, the Court was required to cite to the statutory basis supporting the denial. IC 5-14-3-9(c)(2)(A). While the Court declined to produce these personnel records, it did not within the four corners of the February 25, 2004, response cite to Indiana Code 5-14-3-4(b)(8) in support of that nondisclosure. Ordinarily, the failure to comply with this provision would constitute a violation of the APRA even where the nondisclosure was otherwise proper, as it was here. However, I do not read that response in a vacuum. The agency previously responded to your first request for the same kinds of records, producing documents subject to the mandatory disclosure provisions of Indiana Code 5-14-3-4(b)(8) and citing to that statute in support of its response. Your subsequent request, at least with regard to the nondisclosure of personnel records relating to employee reprimands, was characterized in that request and in your complaint as a follow up and for clarification. While I certainly think that the better practice would have been for the Court to drop the citation again, I decline to find that the Court *violated the law* when it failed to cite to the code provision previously cited in support of its earlier disclosures and nondisclosures of agency personnel records.

CONCLUSION

For the reasons set forth above, I find that the Court did not violate the APRA when it denied your request for personnel records relating to the reprimand of employees and former employees of the Court.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: The Honorable Stephen M. Sims